121 FERC ¶ 61,213
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 29, 2007

In Reply Refer To:
Wyoming Interstate Company
Docket No. RP08-47-000

Wyoming Interstate Company
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Rex D. Adams
Director, Rates

Reference: Annual Recomputation of Fuel and Lost and Unaccounted-for Percentages

Dear Mr. Adams:

1. On October 31, 2007, Wyoming Interstate Company, Ltd. (WIC) filed revised tariff sheets[1] to reflect the annual adjustments to WIC's fuel, lost and unaccounted-for (FL&U) percentages pursuant to Article 30 of the General Terms and Conditions (GT&C) of WIC's tariff. WIC also requests waiver of its tariff if necessary to make a refund related to certain quantities that were excluded from its calculations because they would result in retention percentages of certain components of less than zero. As discussed below, the Commission approves WIC's refund proposal, and accepts the tariff sheets, subject to conditions.

2. WIC states that the FL&U charges listed in its filing were calculated based on the actual throughput, customer fuel and lost and unaccounted-for retention, fuel usage and system losses and gains for the twelve months ending August 31, 2007. WIC states that the change in the base fuel retention percentages at Echo Springs and Piceance is *de minimis*. WIC further states that there was a slight increase in the base fuel retention percentage in the Mainline, Powder River, and Medicine Bow Incremental systems. First, WIC explains the increase in the Mainline system by noting that physical throughput during the twelve months ending 2006 was consistent with throughput during

[1] Eighteenth Revised Sheet No. 4C and Second Revised Sheet No. 4D to its FERC Gas Tariff, Second Revised Volume No. 2.

the twelve months ending 2007, despite a forecasted increase in anticipation of the new Piceance lateral. Thus, WIC states that throughput for the retention rate development is lower this year because the increase forecasted for the prior year was never realized. Second, WIC explains the increase in the Powder River and Medicine Bow systems by stating that higher fuel consumption was not offset by higher throughput.

3. Additionally, WIC states that lost and unaccounted-for gas (L&U) rates for all segments of WIC's system show a reduction to zero because WIC has experienced a significant reduction in loss quantities in some months of its data collection period. WIC states that pursuant to Article 30.3 of the GT&C, WIC's Fuel and/or L&U rates cannot be less than zero. WIC notes that several of the percentages, if left unadjusted, would be less than zero. Therefore, WIC proposes to exclude from its calculations such quantities that would reduce the Fuel and/or L&U rates to below zero (Excluded Quantities).

4. WIC also states that Article 30.3 is silent as to the disposition, if any, of quantities that cause FL&U reimbursement percentages to be less than zero. WIC acknowledges that it has previously excluded and deferred quantities that would result in below-zero rates and used them to offset future FL&U reimbursement percentages. However, WIC asserts that the Excluded Quantities are particularly large here because of the size of the quantity deferred in the last annual filing as well as the additional amounts proposed to be excluded in this filing. Because the Excluded Quantities represent a significant amount of gas, WIC proposes to cash out those quantities that remain unused in establishing a zero percent retention percentage for the Piceance Incremental fuel percentage and all L&U percentages. To do so, WIC requests that the Commission waive Article 30 of its GT&C and any other related provisions.

5. WIC proposes to refund the amounts derived from cashing out the Excluded Quantities from the FL&U reimbursement percentages for the Piceance Incremental fuel percentage and all L&U percentages. To calculate the refund amount, WIC states that it has used its tariff cash-out price of $4.374 per Dekatherm (Dth), which WIC derived by using the average of the daily midpoint index prices for the Rockies – CIG North System for the twelve months ending August 2007.[2]

6. WIC describes its methodology for calculating the refunds as follows. WIC will determine the total dollar amount to be refunded to shippers on each lateral by multiplying WIC's total Fuel or L&U deferred by the proposed cash-out price of $4.374/Dth. WIC states that it will then determine the refund amount for each shipper on

[2] WIC asserts that it chose this price because of unique circumstances depressing the CIG North System index prices. WIC argues that it would have been reasonable to use the latest available cash-out price, which is $2.794/Dth for October 2007. However WIC states that in fairness to its shippers, it chose the higher twelve-month average cash-out price of $4.374/Dth to account for these unique circumstances.

each lateral by dividing the amount of Fuel or L&U retained by an individual shipper for each lateral by the total Fuel or L&U retained on the same lateral.[3] WIC states that refunds will be made by invoice credit in the second month following Commission approval of its filing.

7. Notice of WIC's filing was issued on November 1, 2007. Interventions, protests and comments were due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214,[5] all timely-filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On November 13, 2007, Indicated Shippers[6] timely filed comments.

8. In their comments, Indicated Shippers emphasize that they are not protesting WIC's filing. Instead, Indicated Shippers state that while they appreciate WIC's flexibility in refunding the value of the excluded and deferred negative Fuel and L&U quantities, the filing highlights flaws in both the language of WIC's fuel tracker mechanism as well as WIC's interpretation of the same.

9. With respect to the language of the fuel tracker mechanism, Indicated Shippers request that the Commission require WIC to revise its tariff to make clear that a ban on a negative fuel rate applies only when the overall FL&U rate (i.e., the sum of the Fuel rate and the L&U rate) would be negative for service to non-exempt shippers.[7] Thus, a negative adjustment amount for either the Fuel component or the L&U component would not be prohibited, so long as the sum of the two components does not result in an overall negative adjustment. Indicated Shippers point out that the Fuel rate adjustment is invariably positive and much larger than the L&U rate adjustment. Indicated Shippers state that allowing the tariff to prohibit each individual Fuel or L&U component from

[3] WIC states that due to last minute technical problems, it was unable to provide actual refund allocation data; instead, it provided illustrative data. WIC states that it will supplement this filing with actual data as soon as possible.

[4] 18 C.F.R. § 154.210 (2007).

[5] 18 C.F.R. § 385.214 (2007).

[6] The Indicated Shippers are BP Energy Company, BP America Production Company, and Marathon Oil Company.

[7] Non-exempt shippers are those who are charged both a fuel and an L&U component. Shippers at certain points who do not use fuel are exempt from fuel charges, though they do pay an L&U rate.

being a negative amount could lead to the exclusion of quantities from the adjustment calculation, even though the overall FL&U adjustment would remain positive.

10. Indicated Shippers acknowledge that WIC's tariff states that "neither the Fuel or the L&U will be less than zero."[8] However, Indicated Shippers request that the Commission require WIC to revise its tariff to state that a ban on a negative rate applies only to the overall FL&U rate, not to the individual Fuel and L&U components of that rate.

11. Additionally, Indicated Shippers argue that implicit in the true-up mechanism of WIC's fuel tracker is a requirement that WIC carry over any Fuel or L&U quantities that would cause the overall FL&U rate to be negative. Indicated Shippers request that the Commission clarify that a carryover is an implicit requirement of the true-up. Indicated Shippers state that the only way WIC can accurately track both Fuel and L&U costs in its true-up is by including the carryover of Excluded Quantities to the next periodic filing.[9] Absent such a requirement, WIC would reap a windfall by retaining the Excluded Quantities. Therefore, Indicated Shippers assert that the carryover is an essential component and implicit requirement of the true-up mechanism in WIC's tariff.

12. Indicated Shippers also request that the Commission clarify that the carryover must be implemented in a manner that ensures that the carryover is not nullified if it results in a Fuel or L&U under-recovery. Indicated Shippers state that if a carryover results in an under-recovery for a subsequent annual period, WIC might seek to reflect such under-recovery in its next periodic filing. Indicated Shippers argue that this result would repeatedly defer any benefits flowing from the carryover. Therefore, Indicated Shippers argue that the carryover should not be treated as an under-recovery for a subsequent annual period.

13. The Commission conditionally accepts and suspends WIC's FL&U filing for a minimal period to be effective December 1, 2007, subject to refund. The Commission's policy regarding tariff filing suspensions is that such filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum

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[8] Wyoming Interstate Company, FERC Gas Tariff, Second Revised Volume No. 2, Eighth Revised Sheet No. 83, § 30.3.

[9] *See ANR Pipeline Co.,* 110 FERC ¶ 61,069, P 22-24 (2005) (requiring that when an individual cost item is modified outside a general section 4 rate case, the individual cost item is, in fact, tracked accurately).

period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). The Commission finds that such circumstances exist here where WIC is filing an annual update pursuant to an approved gas tracker mechanism. Therefore, the Commission will exercise its discretion to suspend the rates to take effect on December 1, 2007, subject to refund and conditions.

14. Because of the large size of the Excluded Quantities, the Commission finds that WIC's proposal to cash out those quantities, as well as its methodology and cash-out index price selection, are just and reasonable. Prospectively, the Commission will require WIC to file revised tariff sheets in order to clarify the operation of its tracker provision consistent with Commission policy.

15. Currently, section 30.3 of WIC's tariff states that "neither the Fuel or the L&U will be less than zero." Indicated Shippers point out that such language, which could be read to prohibit a negative amount for either the Fuel or the L&U component of the overall FL&U rate, can lead to a higher overall FL&U rate by failing to take into account that a negative component—either Fuel or L&U—can be offset with a positive component of the adjustment. If the L&U rate is negative, but is factored into the overall Fuel and L&U adjustment as zero (due to the above-quoted tariff language), rather than deducted from a much higher, positive Fuel component, shippers would be forced to pay a higher overall FL&U rate than would be justified by WIC's actual costs. Such incongruence between cost incurrence and allocation is inconsistent with Commission policy and precedent. We therefore find Indicated Shippers' request to be reasonable and will require WIC to file revised tariff sheets reflecting our decision that only the overall FL&U rate adjustment may not be negative. Negative components (e.g., L&U) must be offset against positive components (e.g., Fuel) to determine whether the overall FL&U adjustment is negative, and whether any quantities should be excluded from the adjustment (Excluded Quantities).

16. This is consistent with *ANR Pipeline Co.* (*ANR*), where the Commission discussed its policy regarding the tracking of individual cost items.

> Allowing a particular cost item to be tracked gives the pipeline the opportunity to increase that cost item without regard to the possibility of any offsetting cost reductions. The Commission believes that in return for this opportunity, there should be an assurance that the individual cost item is, in fact, tracked accurately. Having been given an opportunity to increase one cost item without regard to other cost decreases, the pipeline should not be permitted to overrecover that cost under any circumstances.[10]

[10] *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 17 (2005).

Although ANR discussed whether the pipeline had to have a true-up as part of its fuel tracker mechanism, the same concerns apply here, where WIC is tracking both its Fuel and L&U costs in annual fuel filings. By prohibiting either the Fuel rate or the L&U rate from being a negative quantity, WIC's tariff allows the pipeline to charge a higher Fuel rate when, as in the present filing, the L&U rate is negative but the overall FL&U rate is positive. The current language of section 30.3, therefore, fails to ensure that the individual cost item is being "tracked accurately."

17. Moreover, the Commission has previously considered a similar prohibition of a negative L&U reimbursement percentage on Colorado Interstate Gas Company (CIG), an affiliate of WIC, noting that it was not necessarily just and reasonable to withhold the effect of negative L&U adjustments, particularly when they are more than offset by a much higher Fuel adjustment component.[11] The same rationale applies equally to WIC as it did to CIG to ensure negative L&U components are offset against positive Fuel components, and to allow prompt disbursement of credits to shippers.[12] Because WIC's overall FL&U rate is composed of L&U and Fuel rates, and the Fuel rate is almost invariably the larger of the two, WIC will still implement a positive adjustment if one of the component rates is a negative amount, and the overall adjustment will more accurately track the costs of Fuel and L&U. Therefore, pursuant to section 5 of the Natural Gas Act, the Commission directs WIC to file revised tariff sheets within 30 days of this order, to reflect that although the sum of the Fuel and/or L&U components may not be less than zero, either one of the components may be less than zero.

18. Furthermore, the Commission clarifies that the true-up mechanism of section 30.3 of WIC's tariff requires that WIC carry over any Excluded Fuel or L&U Quantities not reflected in a fuel filing. True-ups are intended to assure that FL&U mechanisms are accurate.[13] The goal of accurately tracking costs would be defeated if it was left to a pipeline's discretion to pass through decreased costs (i.e., a negative Fuel or L&U rate) while at the same time requiring shippers to pay increased costs (i.e., a positive Fuel or L&U rate). Therefore, the Commission finds that WIC's tariff requires that WIC carry

[11] *Colorado Interstate Gas Company*, 117 FERC ¶ 61,333, P 21 (2006) (also noting that open-ended deferrals of negative L&U reimbursements would not be just and reasonable).

[12] *Id.* P 20.

[13] *See ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 17 (2005).

over any Excluded Quantities not reflected in its overall FL&U percentage, and in such a way that the carry over is not nullified if it appears to cause an under-recovery in a subsequent filing.[14]

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[14] *See Colorado Interstate Gas Co.*, 116 FERC ¶ 61,310, at P 18 (2006) (allowing carryover deferral of over-recovered L&U only so long as ultimate crediting of deferrals does not deny shippers the full benefit of the carried over amounts).